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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79–17)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Romania

There is published below a directive of October 20, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in categories 334 and 338 manufactured or produced in Romania.

This directive was published in the Federal Register on October 26, 1978 (43 F.R. 50012), by the committee.

(QUO–2–1)

Dated: January 9, 1979.

WILLIAM D. SLYNE,
(for Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, October 20, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 6 and 25, 1978, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive

Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on October 26, 1978, the levels of restraint established in the directive of March 28, 1978, for categories 334 and 338 as follows:

Category		*Amended 12-month level of restraint* [1]
334	186,320	dozen of which not more than 36,320 dozen shall be in all TSUSA numbers in the category except TSUSA 380.0611
338	300,000	dozen of which not more than 97,222 dozen shall be in TSUSA Nos. 380.0028, 380.0029, 380.0651, and 380.0652

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 79-18)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Nonrubber Footwear From Argentina

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Govern-

[1] The amended levels of restraint have not been adjusted to account for any imports after Dec. 31, 1977.

ment of Argentina provides benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture, production, or exportation of nonrubber footwear. Deposited countervailing duties in the amount of these benefits will be required at the time of entry in addition to duties normally due on dutiable shipments of the merchandise.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: James Lyons, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; 202-566-8256.

SUPPLEMENTARY INFORMATION: On July 12, 1977, a "Preliminary Countervailing Duty Determination" was published in the Federal Register (42 F.R. 35927). The notice stated that it had been preliminarily determined that benefits had been received by Argentine manufacturer-exporters of nonrubber footwear which might constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act").

The merchandise in question is described in part 1A of schedule 7 of the Tariff Schedules of the United States (TSUS), excluding TSUS items 700.51, 700.52, 700.53, 700.54, and 700.60.

A reembolso, or export rebate, granted by the Government of Argentina to exporters in the amount of 20 percent of the f.o.b. value of the merchandise, was preliminarily determined to be a bounty or grant. The stated purpose of this rebate is to reimburse exporters for various taxes paid in the production or sale of the exported article and for various taxes passed on to the exporter from earlier production stages. Information contained in a survey conducted by the Argentine Government (which examined the cost structure of a preponderance of the nonrubber footwear manufacturer who export) indicates thats indirect taxes assessed on the exported product or physically incorporated components which could be, but which have not been, rebated have a total incidence of 20.46 percent. According to past Treasury practice, such taxes may be rebated and are considered eligible as an offset against the reembolso. Other taxes which the Argentine Government also had presented as eligible for rebate and, thus, appropriate as an additional offset have not been determined to constitute taxes directly related to the exported product or its physical components and therefore are ineligible as an offset. These levies include labor-related taxes, calculated as a percentage of wages, and taxes on real estate, bank credits, and credits to industrial companies. The indirect taxes which are eligible for rebate, however, are more than sufficient to offset the entire reembolso. Consequently, this practice has been

determined not to constitute a bounty or grant within the meaning of the act.

The 10-percent income tax exemption on export-related income in the only other practice investigated which has been determined to constitute a bounty. The value of the income tax benefit to exporters of nonrubber footwear has been calculated at 1.32 percent of f.o.b. value.

It has been determined that none of the other practices examined during the investigation constitute a bounty or grant. The nonexcessive rebate of value added taxes upon the export of goods and the rebate of import duties paid on raw materials used in the production of nonrubber footwear for export were determined not to constitute bounties or grants within the meaning of the act. Programs found not to have been utilized by the nonrubber footwear industry include the issuance of tax rebate certificates, economic development incentives, the drawback of duty on industrial equipment, and export risk insurance at low rates. Two other practices, the use of multiple exchange rates and preferential financing, have been eliminated by the Government of Argentina. The current rates of interest reflect those which are prevalent commercially.

After consideration of all information received subsequent to the preliminary determination, it is hereby determined that exports of nonrubber footwear from Argentina benefit from bounties or grants within the meaning of section 303 of the act (19 U.S.C. 1303) in the form of the income tax exemption on export-related income.

Accordingly, notice is hereby given that nonrubber footwear, imported directly or indirectly from Argentina, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the act and until further notice, the net amount of such bounties or grants has been determined to be 0.86 percent of the f.o.b. price for export of nonrubber footwear to the United States.

Effective on or after the date of publication of this notice and until further notice, upon the entry, or withdrawal from warehouse, for consumption of the merchandise from Argentina which benefits from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above

declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of nonrubber footwear from Argentina are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

The Government of Argentina has suggested that additional information regarding the applicable rates of indirect taxes assessed on the exported footwear or its physical components may be forthcoming. Should any additional information, once received and analyzed, result in any change in the size of the bounties or grants presently determined to exist, notice thereof will be published, declaring whether new rates would then be applicable to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of such a notice in the Federal Register.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of nonrubber footwear manufactured in Argentina.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting, after the last entry for "Argentina," the words "nonrubber footwear" under the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury decision" and the words "Bounty Declared-Rate" in the column headed "Action."

(R.S. 251, as amended, secs. 303, as amended, 624, 46 Stat. 687 as amended, 759 (19 U.S.C. 66, 1303, 1624).)

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (revision 15) March 16, 1978, the provisions of Treasury Department Order No. 165, revised, November 2, 1954, and section 154.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

December 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3474)]

(T.D. 79-19)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

Vitamin K from Spain—Declaration of Net Amount of Bounty or Grant

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net amount of bounty or grant declared.

SUMMARY: This notice is to advise the public of the new rate of countervailing duty applicable to imports of vitamin K from Spain. Based upon a review of information received, the net amount of benefits given by the Government of Spain which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of vitamin K has been determined to be 3.07 percent of the f.o.b. or exworks price to the United States. Accordingly, effective today, vitamin K from Spain will be subject to countervailing duty in accordance with this declaration.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; telephone 202-566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 16, 1976 (41 F.R. 50419), a notice, T.D. 76-321, was published stating that it had been determined that exports of vitamin K from Spain received bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that vitamin K imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption on or after November 16, 1976, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. In accordance with section 303 and based on the information then available, the net amount of bounties or grants was

determined to be 10.5 percent of f.o.b. or exworks price to the United States.

On the basis of subsequent information submitted regarding the tax incidence on the manufacture of vitamin K, it has been ascertained and determined that the net amount of benefits paid or bestowed, directly or indirectly, by the Government of Spain on the exportation of vitamin K is 3.07 percent. The benefits are received as a result of the rebate upon export of certain elements of the Spanish indirect tax, the "Desgravacion Fiscal." The rebate consists of:

(1) Taxes on services and inputs which are not physically incorporated in the final product; (2) the special tax levied on the sales of a product from a manufacturer to a wholesaler which, in fact, is not levied on export sales; and (3) the amount of a number of "parafiscal" taxes included in the computation of the rebate, all which are deemed charges assessed for services provided and are not levied on an ad valorem basis on the product.

Accordingly, effective on (day of publication in Federal Register) and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable vitamin K imported directly or indirectly from Spain which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such vitamin K from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "vitamin K" under the country heading "Spain," the number of this Treasury decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624.)

December 20, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3475)]

283-801—79——2

[T.D. 79-20]

Countervailing Duties—Chains and Parts Thereof, of Cast Iron, Iron, or Steel From Italy

Notice of declaration of net amount of bounty or grant and modification of countervailing duties imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of chains and parts thereof, of cast iron iron, or steel from Italy

OFFICE OF THE COMMISSIONER OF CUSTOMS, WASHINGTON, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

Part 159—Liquidation of Duties

AGENCY: U.S. Treasury Department.

ACTION: Modification of final countervailing duty order and declaration of net amount of bounty or grant.

SUMMARY: This notice is to advise the public of the net amount of benefits given by the Government of Italy, which constitute bounties or grants upon manufacture, production, or exportation of chains and parts thereof within the meaning of the countervailing duty law. Based upon a review of information received, the net amount of such bounties or grants has been determined to be 15 lire per kilogram. Accordingly, entries of chains and parts thereof from Italy will be subject to countervailing duties in accordance with this determination.

This notice is to further advise the public that the Treasury is modifying its order with respect to chains and parts thereof from Italy manufactured by Acciaierie Weissenfels S.p.A. It has been determined that this firm receives benefits upon the manufacture, production, or exportation of this product from the Government of Italy in an amount less than 15 lire per kilogram and the countervailing duty is being adjusted accordingly.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: Donald W. Eiss, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; 202-566-8256.

SUPPLEMENTARY INFORMATION: On October 11, 1977, T.D. 77-249 was published in the Federal Register (42 F.R. 54799). In that decision, the Treasury Department found that rebates paid to Italian exporters of chain and parts thereof under Italian law 639 constituted

the bestowal of a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act"). The products covered by this determination are provided for in the Tariff Schedules of the United States under item numbers 652.24, 652.27, 652.30, 652.33, and 652.35, and include chains and parts thereof, of cast iron, iron, or steel, including terminal and connecting links, hooks, rollers, pivots, and plates.

Italian law 639 provides for a rebate to manufacturers of certain steel products, including the subject chain, when the product is exported. The rebate is calculated to cover certain customs duties, indirect taxes, and a number of stamp taxes assessed during the manufacturing process. Certain portions of the Italian law 639 rebates have been determined in previous proceedings under the act to constitute bounties or grants within the meaning of the act. In those cases, the countervailing duty was set equal to the amount of the 639 rebate associated with indirect taxes not directly related to the manufacture of the products.

In the case of chain, the Italian law 639 rebate is set at 15 lire per kilogram. During the course of the investigation no information was supplied by the Italian Government which would have enabled the Treasury to differentiate between directly related and not directly related elements of the rebate. In our final determination, the bounty or grant was estimated to be the full 15 lire per kilogram rebate.

However, during the course of the investigation, the principal exporter of chain to the United States, Acciaierie Weissenfels, S.p.A. (Weissenfels), alleged that it pays customs duties and indirect taxes directly related to the manufacture of chain which are not rebated upon export and which exceed the 639 rebate. Because the rebate of such duties and taxes would not be considered a bounty or grant by Treasury, the "effective" subsidy provided by the 639 rebate would be reduced to the extent that Weissenfels had foregone the rebate of those duties and indirect taxes when exporting chain.

The Treasury was unable to determine the validity of Weissenfels' claims prior to the final determination and therefore the liquidation of all entries for consumption or withdrawals from warehouse for consumption was suspended pending clarification of the net amount of bounty or grant applicable to Weissenfels.

It has now been determined that Weissenfels pays a number of customs duties on imported raw materials and component parts which should be allowed as offsets to the Italian law 639 rebate. A request for an offset in an amount equal to taxes paid on electricity, fuels, lubricants, water, and insurance has been denied. In a notice published contemporaneously with this decision, the Treasury Department has established that only taxes and duties paid on elements physically

incorporated into the exported product (or its packing) should be allowed as offsets to benefits otherwise received. Since the elements upon which the above-enumerated taxes were paid do not meet the physical incorporation test, no offset has been granted. The net benefit received by Weissenfels has been calculated to be 6.88 lire per kilogram which represents an ad valorem benefit of 0,8 percent.

Absent any information regarding offsets to the 639 rebate for other Italian manufacturers-exporters of the product covered by this order, it is determined that the net amount of the bounty or grant paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of chains or parts thereof from Italy is 6.88 lire per kilogram for merchandise produced by Acciaierie Weissenfels, S.p.A. and 15 lire per kilogram for this merchandise manufactured or produced by all other firms in Italy.

Accordingly, notice is hereby given that countervailing duties in the amount ascertained in accordance with the above declaration will be collected upon the liquidation of all entries of the subject merchandise for consumption or withdrawals from warehouse for consumption which were suspended pursuant to T.D. 77–249 during the period October 11, 1978, to the present. Customs officers are instructed to proceed with liquidation of all such entries of chains and parts thereof from Italy in accordance with the terms of this order.

Effective upon the date of publication of this notice in the Federal Register, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of this merchandise, imported directly or indirectly from Italy, which benefits from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of the merchandise covered by this determination are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of such chains and parts thereof from Italy.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), is amended by adding after the last entry from Italy for "Certain chains and parts thereof" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury decision," and the words "Final Rate Declared; Modified

as to chains and parts thereof manufactured by Acciaierie Weissenfels S.P.A." in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, revision 15, March 16, 1978, the provisions of Treasury Department Order No. 165, revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

December 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3473)]

[T.D. 79-21]

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

Unwrought Zinc From Spain—Declaration of Net Amount of Bounty or Grant

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Net amount of bounty or grant declared.

SUMMARY: This notice is to advise the public of the decision to reinstate the basis for calculating the countervailing duty applicable to imports of unwrought zinc from Spain which prevailed prior to the Treasury Department's decision with respect to the product announced on June 15, 1978 (43 F.R. 25812). A countervailing duty is imposed when the Treasury Department determines that a bounty or grant is being paid to producers and exporters of merchandise. Based upon a review of the decision made in June, the Treasury Department has determined that only those indirect taxes which are directly related to the product, in the sense that the tax is assessed on the exported product or its physical components or packing (making allowance for waste) may be considered as an offset against the benefits represented by the desgravacion fiscal. The net amount of benefits given by the Government of Spain which constitute bounties or grants upon the manufacture, production, or exportation of unwrought zinc, within the meaning of the countervailing duty law, has been determined to

be 3.24 percent of the f.o.b. price to the United States. Accordingly, effective today, unwrought zinc from Spain will be subject to countervailing duty in accordance with this determination.

EFFECTIVE DATE: Jan. 7, 1979.

FOR FURTHER INFORMATION CONTACT: James Lyons, Office of Tariff Affairs, U.S. Treasury Department, 15th Steet and Pennsylvania Avenue NW., Washington, D.C. 20220; telephone 202–566–8256.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 8, 1977 (42 F.R. 18587), notice was given (T.D. 77–103) that it had been determined that exports of unwrought zinc from Spain are subject to bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that unwrought zinc imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of the notice in the CUSTOMS BULLETIN would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. The amount of the bounties or grants was determined to be 4 percent of the f.o.b. price to the United States.

As is indicated in the notice published contemporaneously, the Treasury Department has determined that the net amount of the bounty or grant being paid or bestowed, directly or indirectly within the meaning of section 303 of the act, upon the exportation of unwrought zinc from Spain should be that which was determined to exist prior to June 15, 1978, less adjustments for a lower value base and taxes on export licenses and metals. This amount 2.64 percent, represents the difference between the desgravacion fiscal net rebate and those amounts the Government of Spain has estimated is paid by the producers of unwrought zinc or any prior stage producers in indirect taxes on any components that were physically incorporated in the exported product or its packing (making normal allowance for waste).

Effective on (date of publication), and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable unwrought zinc imported directly or indirectly from Spain which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such unwrought zinc from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in respect of the commodity "unwrought zinc" and of the country "Spain," the number of this Treasury decision in the column headed "Treasury decision" and the words "new rate" in the column headed "Action." (R.S. 251, sec. 303, as amended, 624; 47 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, revision 15, March 16, 1978, the provisions of Treasury Department Order No. 165, revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

December 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3476)]

[T.D. 79-22]

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

Bottled Green Olives From Spain—Declaration of Net Amount of Bounty or Grant

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Net amount of bounty or grant declared.

SUMMARY: This notice is to advise the public of the decision to reinstate the basis for calculating the countervailing duty applicable to imports of bottled green olives from Spain which prevailed prior to the Treasury Department's decision with respect to the product

announced on June 15, 1978 (43 F.R. 25812). A countervailing duty is imposed when the Treasury Department determines that a bounty or grant is being paid to producers and exporters of merchandise. Based upon a review of the decision made in June, the Treasury Department has determined that only those indirect taxes which are directly related to the product, in the sense that the tax is assessed on the exported product or its physical components or packing (making allowance for waste) may be considered as an offset against the benefits represented by the desgravacion fiscal. The net amount of benefits given by the Government of Spain which constitute bounties or grants upon the manufacture, production, or exportation of bottled green olives, within the meaning of the countervailing duty law, has been determined to be 2.84 percent of the f.o.b. price to the United States. Accordingly, effective today, bottled green olives from Spain will be subject to countervailing duty in accordance with this determination.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: James Lyons, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; telephone 202–566–8256.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 12, 1974 (39 F.R. 32904), notice was given (T.D. 74–234) that it had been determined that exports of bottled green olives from Spain are subject to bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that bottled green olives imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of the notice in the CUSTOMS BULLETIN would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. The amount of the bounties or grants was determined to be 2.9 percent of the f.o.b. price to the United States.

As is indicated in the notice published contemporaneously, the Treasury Department has determined that the net amount of the bounty or grant being paid or bestowed, directly or indirectly within the meaning of section 303 of the act, upon the exportation of bottled green olives from Spain should be that which was determined to exist prior to June 15, 1978, less adjustments for tax on export license. This

amount 2.44 percent, represents the difference between desgravacion fiscal net rebate and those amounts the Government of Spain has estimated is paid by the producers of bottled green olives or any prior stage producers in indirect taxes on any components that were physically incorporated in the exported product or its packing (making normal allowance for waste).

Effective on (date of publication), and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such suitable bottled green olives imported directly or indirectly from Spain which benefit from these counties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such bottled green olives from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.74(f)) is amended by inserting in respect of the commodity "bottled green olives" and of the country "Spain," the number of this Treasury decision in the column headed "Treasury decision" and the words "new rate" in the column headed "Action." (R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, revision 15, March 16, 1978, the provisions of of Treasury Department Order No. 165, revised, November 2, 1954, and section 1593.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

December 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3477)]

283-801—79——3

[T.D. 79-23]

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

Nonrubber Footwear From Spain—Declaration of Net Amount of Bounty or Grant

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Net amount of bounty or grant declared.

SUMMARY: This notice is to advise the public of the decision to reinstate the basis for calculating the countervailing duty applicable to imports of nonrubber footwear from Spain which prevailed prior to the Treasury Department's decision with respect to the product announced on June 15, 1978 (43 F.R. 25812). A countervailing duty is imposed when the Treasury Department determines that a bounty or grant is being paid to producers and exporters of merchandise. Based upon a review of the decision made in June, the Treasury Department has determined that only those indirect taxes which are directly related to the product, in the sense that the tax is assessed on the exported product or its physical components or packing (making allowance for waste) may be considered as an offset against the benefits represented by the desgravacion fiscal. The net amount of benefits given by the Government of Spain which constitute bounties or grants upon the manufacture, production, or exportation of nonrubber footwear, within the meaning of the countervailing duty law, has been determined to be 2.54 percent of the f.o.b. price to the United States. Accordingly, effective today, nonrubber footwear from Spain will be subject to countervailing duty in accordance with this determination.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: James Lyons, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; telephone 202-566-8256.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 12, 1974 (39 F.R. 32904), notice was given (T.D. 74-235) that it had been determined that exports of nonrubber footwear from Spain are subject to bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that nonrubber footwear imported directly or indirectly from Spain, if entered for consumption or withdrawn from warehouse for consumption after the expiration of 30 days after publication of the notice in the CUSTOMS BULLETIN would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. The amount of the bounties or grants was determined to be 3 percent of the f.o.b. price to the United States.

As is indicated in the notice published contemporaneously, the Treasury Department has determined that the net amount of the bounty or grant being paid or bestowed, directly or indirectly within the meaning of section 303 of the act, upon the exportation of nonrubber footwear from Spain should be that which was determined to exist prior to June 15, 1978, less adjustments for an export license tax and a previous overvaluation of the basis upon which the desgravacion fiscal was calculated. This amount, 2.27 percent, represents the difference between the desgravacion fiscal net rebate and those amounts the Government of Spain has estimated is paid by the producers of nonrubber footwear or any prior stage producers in indirect taxes on any conponents that were physically incorporated in the exported product or its packing (making normal allowance for waste).

Effective on (date of publication), and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable nonrubber footwear imported directly or indirectly from Spain which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such nonrubber footwear from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in respect of the commodity "nonrubber footwear" and of the country "Spain," the number of this Treasury decision in the column headed "Treasury decision" and the words "new rate" in the column headed "Action." (R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, revision 15, March 16, 1978, the provisions of

Treasury Department Order No. 165, revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

December 21, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Jan. 17, 1979 (44 F.R. 3477)]

(T.D. 79-24)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in Haiti

There is published below a directive on October 30, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in certain categories manufactured or produced in Haiti. This directive amends, but does not cancel, that committee's directive of December 23, 1977 (T.D. 78-62).

This directive was published in the Federal Register on November 3, 1978 (43 F.R. 51443), by the committee.

(QUO-2-1)

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, October 30, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1979; pursuant to the

Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22 and 23, 1976, as amended, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 6, 1978, the levels of restraint established for categories 348, 359, 632, 636, 637, 650, 651, and 652 to the following:

Category	*Amended 12-month level of restraint*[1]	
348	112,360	dozen
359	543,478	pounds
632	1,521,739	dozen pairs
636	99,338	dozen
637	281,690	dozen
650	58,824	dozen
651	61,538	dozen
652	456,250	dozen

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and manmade fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 79-25)

Cotton Textile Products—Restriction on Entry

Restrictions on entry of wool textile products manufactured or produced in Poland

There is published below a directive of October 27, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in certain categories

[1] The levels of restraint have no t been adjusted to account for any imports after Dec. 31, 1977.

manufactured in Poland. This directive amends, but does not cancel, that committee's directive of March 17, 1978 (T.D. 78–114).

This directive and a correction thereto, were published in the Federal Register on October 31, 1978 (43 F.R. 50730), and November 9, 1978 (43 F.R. 52275), by the committee.

(QUO–2–1)

Dated: January 16, 1979.

WILLIAM D. SLYNE
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. 20230, October 27, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of January 9 and 12, 1978, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 1, 1978, the levels of restraint established in the directive of March 17, 1978, for categories 338 and 359 as follows:

Category	*Amended 12-month level of restraint* [1]
338	441,389 dozen of which not more than 204,028 dozen [2] shall be in TSUSA 380.0651 and 380.-0652 pounds
359	600,000

You are further directed, effective on November 1, 1978, to prohibit entry of cotton textile products in category 334, produced or manufactured in Poland and exported to the United States during the 12-month period which began on January, 1 1978, in excess of the following level of restraint:

Category	*Amended 12-month level of restraint* [1]
334	151,937 dozen of which not more than 16,949 dozen shall be in all TSUSA numbers in the category except TSUSA 380.0611

Cotton textile products in category 334 that have been exported to the United States before the effective date of this directive shall not be denied entry under this directive.

Cotton textile products in category 334 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of TSUSA numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), and September 5, 1978 (43 F.R. 39408).

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

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[1] The levels of restraint have not been adjusted to account for any imports after Dec. 31, 1977.

[2] The sublimit for category 338 has been adjusted to reflect the application of carry forward and flexibility. (See 43 F.R. 47768.)

(TD–79–26)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
January 1, 1979	Holiday
January 2–4, 1979	$0.632511
January 5, 1979	.630597
Hong Kong dollar:	
January 1, 1979	Holiday
January 2, 1979	$0.2088
January 3, 1979	.2091
January 4, 1979	.2099
January 5, 1979	.2101
Iran rial:	
January 1, 1979	Holiday
January 2–5, 1979	$0.0126
Philippines peso:	
January 1, 1979	Holiday
January 2–4, 1979	$0.1360
January 5, 1979	.1365
Singapore dollar:	
January 1, 1979	Holiday
January 2, 1979	$0.4623
January 3, 1979	.4587
January 4–5, 1979	.4598

Thailand baht (tical):

January 1, 1979	Holiday
January 2–4, 1979	$0.0490
January 5, 1979	.0488

(LIQ–3–O:D:E)
Date: January 16, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

283–801—79——4

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: January 15, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79-2)

Vessel Repair: Cost of Inspection Performed by ABS Surveyor

Date: October 3, 1978
File: VES-13-18-R:CD:C
103519 JL

This ruling concerns a petition for relief from payment of vessel repair duties assessed on the cost of an inspection conducted by an American Bureau of Shipping surveyor.

Facts.—An abstract of the vessel's log discloses that when the ship's engineers opened the port boiler for inspection and cleaning on February 7, 1978, it was found that the superheater tubes were leaking. On February 9, 1978, an American Bureau of Shipping (hereafter ABS) surveyor boarded the vessel for inspection of the leaking tubes. The following day, repairmen boarded the vessel and welded four superheater tubes and pipes. The ABS surveyor reboarded the vessel to inspect the welds and declared them to be unsatisfactory. On February 11, repairmen and technicians from a different shop boarded the vessel and rewelded the tubes and pipes under the supervision of the ABS surveyor. Subsequent to the rewelding, the surveyor inspected the repairs and certified them to be complete and satisfactory.

The petitioner's position is that the ABS is the official authorized surveying authority recognized by the U.S. Coast Guard as published in the Federal Register, and that the Coast Guard regulations, "part 91.30-(a)," require that "a survey, either general or partial,

according to the circumstances, shall be made any time an accident occurs or a defect is discovered which affects the safety of the vessel or the efficiency or completeness of its lifesaving appliances, firefighting or other equipment, or whenever any important repairs or renewals are made." It is the petitioner's position that because the Coast Guard regulations required the use of the surveyor, the fee paid was not a part of the repairs effected and duties assessed should be remissible under the vessel repair statute.

Issues.—1. Were services performed by the ABS surveyor under the facts of this case part of the repairs or were they in the nature of a general survey?

2. Are surveys required by a governmental agency considered dutiable repairs under 19 U.S.C. 1466?

Law and analysis.—The vessel repair statute, 19 U.S.C. 1466, provides for circumstances under which repairs effected are either remissible (or subject to refund of duty paid), or nondutiable as in the case of subsection (c) whereby repairs accomplished on certain types of special-purpose vessels which are out of the United States more than 2 years are not dutiable. Where the special exception provided under subsection (c) is not involved, it is an administrative interpretation by the Customs Service which determines whether an item paid for by a vessel owner in a foreign shipyard will be considered a dutiable repair (or equipment purchase) under 19 U.S.C. 1466. In this regard, CIE 429/61 dated April 28, 1961, provides in pertinent part as follows:

> In this regard, we concur in your opinion that the cost of inspections which are in the nature of surveys are not dutiable incidents coming within the thrust of section 3114, Revised Statutes. However, expenses which are incurred in conducting inspections made subsequent to the repairs, so as to ascertain whether the work has been properly performed, are dutiable as integral parts of the expenses of repairs although separately itemized. Moreover, testing which is effected for the purpose of ascertaining whether repairs to certain machinery or parts of the vessel are required, or are performed in order to ascertain if the work is adequately completed, are also integral parts of the repairs and are accordingly dutiable.

The vessel deck log clearly shows that the surveyor was called on board the vessel to inspect the superheater tubes to determine which repairs were necessary, to conduct an inspection subsequent to the repairs so as to ascertain whether the work was properly performed and adequately completed. Therefore, pursuant to the holding in CIE 429/61, the costs of the services performed by the ABS surveyor in Indonesia on the vessel were dutiable repairs rather than inspections which were in the nature of surveys.

Headquarters ruling dated April 25, 1975, to the Regional Commissioner at San Francisco, held that the issue of whether surveys and tests were undertaken because of U.S. Coast Guard requirements is not determinative in considering questions of dutiability or remission under the vessel repair statute.

Holdings.—1. The expenses incurred in connection with the inspections performed by the ABS surveyor on the subject vessel before, during, and subsequent to repairs effected on the superheater tubes are dutiable vessel repairs.

2. The requirement of the U.S. Coast Guard regulations that a survey be made every time an accident occurs or defect is discovered which affects the safety of the vessel, etc., is not relevant to whether or not the expense of the survey is a dutiable item.

(C.S.D. 79-3)

Date: October 3, 1978
File: VES-13-02-R:CD:C
103573 JL

This ruling involves a petition for remission of vessel repair duties assessed on three LASH barges.

Facts.—(Company A) has filed a petition for remission of duties on repairs to three LASH barges which were affected in Calcutta, India, on February 6, 1978. The petitioner states that the barges were discovered to have sustained damages which required temporary repairs to retain them in a seaworthy condition according to a survey conducted by the American Bureau of Shipping. Petitioner states that the cause of the damages is actually unknown, but surmises that they were sustained as a result of barge contact with other barges, piers, and/or hard jetties during periods of heavy weather.

Petitioner maintains that it cannot furnish the quantum of evidence which is ordinarily necessary to qualify for remission of a vessel repair case because of the following:

1. As LASH barges are nonmanned vessels there can be no statements by the master or vessel officer concerning the damages and no deck logs are maintained.

2. When the damage to barges overseas is caused by heavy weather, weather reports are obtainable from the agents which specify only general weather conditions and cannot be pinpointed to a specific time or place because of the fact that the vessels are nonmanned and are, instead, attended by one or more watchmen who are responsible for seeing that all the barges are adequately moored.

The Regional Commissioner would disallow the petition for remission of duties in full because the evidence furnished does not qualify as "good and sufficient" pursuant to 19 U.S.C. 1466(b)(1).

Issues.—1. Are LASH barges to be treated as vessels apart from the transporting vessel for purposes of the vessel repair statute?

2. Should there be a different standard applied to evidence submitted by owners of LASH barges than for owners of manned vessels under the vessel repair statute?

Law and analysis.—19 U.S.C. 1466(b)(1) states as follows:

> If the owner or master of such vessel furnishes good and sufficient evidence * * *
>
> > (1) that such vessel, while in the regular course of the voyage, was compelled by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

Section 4.14(f) provides in part that when relief is claimed under the vessel repair statute there shall be submitted a certificate of the master, together with itemized bills covering the cost of the repairs made or equipment purchased, abstracts of the vessel's log, and a certificate of the proper officer when the repairs were made in order to obtain a certificate of seaworthiness, which certificate is required to set out fully the following information:

> 1. the nature of the casualty or stress of weather encountered;
> 2. when and where the stress of weather or casualty occurred;
> 3. the damage done by the casualty or stress of weather;
> 4. the port where the repairs were made or equipment secured:
> 5. a statement of the master of the vessel as to whether or not the repairs or equipments were required to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

Headquarters letter dated August 31, 1973, file VES–5–13 100348, held, among other things, that LASH and/or Seabee barges documented as vessels of the United States are not considered at the time of arrival in this country solely as containers but are considered vessels documented for the foreign trade, or used in the foreign trade, and are without question subject to the provisions of 19 U.S.C. 1466 and the regulations issued thereunder.

Headquarters letter dated February 5, 1974, VES–5–13 100916 held, among other things, that for the purposes of section 1466, the master of the transporting vessel, whether United States or foreign-flag, may present Customs Form 3415 for LASH-type barges arriving on board the vessel. If the master of the transporting vessel does not

present the Customs Form 3415 for a LASH-type barge at the time of formal entry of the transporting vessel, the owner of the LASH-type barge or his agent must present the Customs Form 3415 within 48 hours after the arrival of the transporting vessel.

The procedure adopted in regard to declaration of foreign repairs or equipment purchases for LASH-type barges was necessitated by the fact that the barges are unmanned, do not therefore have a master, and are not required to make formal entry under section 4.7 of the Customs Regulations. You will note, however, from the above quoted headquarters rulings that the procedure is optional and failure to utilize it in no way relieves the owner of the barge or barges from making the necessary declaration and entry under section 4.14. Thus, there is no basis in law or regulation for treating the barges as being connected to the transporting vessels for purposes of applying the vessel repair statute. Inasmuch as barges of the LASH/Seabee type are non-self-propelled, it is seldom anticipated that they will depart or arrive in the United States other than in conjunction with a transporting vessel. You note in your covering memo that in the instant case the file indicates that the barges departed the United States on one transporting vessel, were fleeted overseas (which fact you are of the opinion indicates that they were used to carry cargo while overseas), and returned to the United States on a different transporting vessel. As we pointed out above, the submission of the Customs Form 3415 by the master of the transporting vessel is one of convenience rather than of regulation and the barge, insofar as reporting requirements under 19 U.S.C. 1466 are concerned, is a vessel separate and apart from transporting vessels. For this reason, we see no reason to differentiate between those cases in which the barge is transported foreign and returned on the same transporting vessel, and those cases in which different transporting vessels are used. Likewise, we do not consider it relevant that the barge may or may not have been used in point-to-point carriage of cargo overseas before its return to the United States

Regarding the quantum of evidence necessary to sustain remission under the vessel repair statute, the expression "good and sufficient" as set out in 19 U.S.C. 1466(b) grants discretion to the Customs Service (through the Secretary of the Treasury) in determining the sufficiency of evidence submitted to support a finding of stress of weather or other casualty that would give rise to remission. We are of course aware that section 4.14(f) of the Customs Regulations requires specific items to be submitted in support of a vessel repair entry and,

by inference, an acceptable petition for relief. In the instant case, the petitioner states that because the barges are unmanned there is no deck officer or master who would be present when the damage occurred and who could certify as to weather conditions, damages sustained, etc. We are not unaware that the owners of barges are unable to supply precisely each item of documentation required in section 4.14(f) and would accept other documents instead. However, keeping in mind that the requirement of "good and sufficient evidence" is mandated by the statute, we are not inclined to accept merely the statement of the owner that the barge damage was probably caused by bad weather, or its conclusion that because the barges were checked for damage before they left the United States, any repairs effected overseas must have been the result of a casualty incurred on the foreign voyage of the vessel. We do note however, that the petitioner has admitted that a watchman is on duty to supervise the safety and mooring of the barges. We see no reason why a certification from the owner's agent and/or a sworn statement from the watchman in charge at the time the damage occurred could not be submitted. Of course, when the LASH barges are on board a transporting vessel while it is in a foreign port any damage that would occur to the barges at that time would of necessity be covered by a report of responsible officers and/or the master of the vessel as in any other vessel repair case.

In summary then, it can be said that statements of responsible agents of the owner, such as a watchman or a foreign shipping agent, may be accepted as good and sufficient evidence of a casualty occurring to a LASH barge while in an overseas port, in place of the master's or other responsible vessel officer's statement as in the case of a manned vessel. But the mere statement from an owner that a casualty occurred, without adequate supporting evidence, is not sufficient to carry the applicant's burden under 19 U.S.C. 1466(b).

Holding.—1. Insofar as processing vessel repair entries and petitions for relief are concerned, LASH and other types of unmanned cargo barges are to be treated as vessels separate and distinct from transporting vessels.

2. Duty is not remitted on the three barges at issue as the petitioner has failed to furnish acceptable evidence that stress of weather or other casualty caused the damages which led to the repairs accomplished in a foreign port.

(C.S.D. 79–4)

Generalized System of Preferences: Asbestos Products Made in Beneficiary Developing Country From Asbestos Lap of U.S. Origin

Date: October 23, 1978
File: R:CV:S BB
055033x055516

Re Decision on application for further review of protest No. 2402–8000001.

DISTRICT DIRECTOR OF CUSTOMS,
El Paso, Tex. 79985:

DEAR SIR: This ruling concerns the GSP status of asbestos products.

Issue.—Whether asbestos lap is substantially transformed in Mexico so as to permit the cost or value of the lap to be included when computing the requisite 35-percent value of GSP eligible asbestos yarns and cloth.

Facts.—According to information submitted by the importer the manufacturing process begins with asbestos lap imported to Mexico from the United States. This lap consists of fibers compressed in the form of a mat 6 or 7 inches wide and approximately one-half inch thick and weighing from 1,500 to 2,400 grains per linear yard. During the initial process (carding) performed in the Mexican plant, the lap is torn apart, the fibers are combed, aligned, and formed into a continuous thin web 5 feet wide which is then divided into narrow (three eights in to 1 in) widths and condensed in a rubbing action and wound on bobbins. The resulting material is called roving. The roving is taken to the next processing step called spinning where it is twisted and stretched to form a continuous thread of asbestos yarn which weighs between 3 and 12 grams per yard. A single thread is further processed in the following ways:

1. It is twisted together with one or more other single threads of asbestos yarn to make plied yarn which is parallel wound on paper tubes, packed in cartons, and imported to the United States.
2. It is twisted by itself or with one or more other single asbestos yarns together with one or more strands of plastic yarn and/or metal wire to make what is referred to as reinforced asbestos yarn.
3. Plied yarns produced by the methods described in 1 or 2 above, are coated with acrylic resin.

4. Plied yarns are also woven into asbestos cloth.

Law and analysis.—Under the GSP, eligible articles produced in designated beneficiary developing countries (BDC's) enter the United States duty-free if the sum of (1) the cost or value of the materials produced in the BDC plus (2) the direct costs of processing operations performed in such BDC is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States. In other words, 35 percent of the value of the article, either materials or processing (or both), must be attributable to the BDC. Materials which are not wholly the growth, product, or manufacture of the BDC must be substantially transformed into a new and different article of commerce which is then used to produce the eligible article before their cost or value can be included in the 35 percent requirement. The substantial transformation test is used a second time to determine whether the eligible article was "produced from" such "substantially transformed constituent materials." We assume that the products in question do not qualify for duty-free treatment on the basis of costs of processing alone.

The "Handbook of Asbestos Textiles," published by the Asbestos Textile Institute, describes the various products derivable from asbestos fibers. We think it is significant that separate chapters are devoted to asbestos lap, roving, and yarn. The "Handbook" states that lap is a felted form of carded asbestos fibers which have been blended with organic fibers. Roving is an assemblage of carded asbestos fibers condensed into a single strand without twist. It is used in the electric wire industry to serve as insulation for heater cords, cables, and electrical heating elements. Single asbestos yarns are made from roving by mechanical twisting to give tensile strength. Advanced yarns are produced in a wide range of constructions to meet the many and varied requirements of their intended use.

Holding.—In our opinion the processes described above substantially transform the American asbestos lap into a new and different article of commerce, namely asbestos roving. The roving is then substantially transformed into new and different articles (plied yarn, reinforced yarn, coated yarn, and asbestos cloth) which are eligible articles under GSP. Therefore, for each of the imported articles, the cost or value of the imported lap may be included in computing the 35-percent, value-added requirement of the GSP.

The protest is allowed with respect to invoiced articles for which the importer has submitted corresponding certificates of origin.

283-801—79——5

(C.S.D. 79–5)

Generalized System of Preferences: Dutiability of Assist in the Form of Artwork for Packaging

Date: October 24, 1978
File: R:CV:V RP
055210

Re Application for further review of protest No. 3001–7–000216.

DISTRICT DIRECTOR OF CUSTOMS,
Seattle, Wash. 98104.

DEAR SIR: This ruling concerns Customs valuation of assists on GSP eligible merchandise.

Issue.—The issue raised in this protest is whether an artwork for packaging assist, incurred and paid for by the importer to the foreign manufacturer, prior to the implementation of the generalized system of preferences (GSP) program, but not declared until May 1977, is separately dutiable, notwithstanding the fact that the subject merchandise is entitled to duty-free entry under GSP.

Facts.—The facts in the case are that 11-inch birdcage hangers, imported by (name) were entered free of duty under item 653.9570, Tariff Schedules of the United States (TSUS), pursuant to the GSP program, on May 6, 1977. However, the import specialist required that the importer add to the value of this merchandise the value of certain artwork supplied by the importer for the packaging of said merchandise. The artwork, considered a dutiable assist, was valued at $560 and entered as being separately dutiable under item 653.9570, TSUS, on the May 6, 1977, consumption entry No. 132224. Apparently, the artwork was incurred in May 1975, paid in 1975 to the vendor, but not declared to Customs until the aforementioned entry date. After liquidation of the entry on June 17, 1977, the instant protest was duly filed contesting the separate dutiability of the artwork for packaging assist.

It is the position of the protestant, based on its interpretation of internal advice No. 299/75 of February 23, 1977 (file No. 540892), that an assist for artwork declared on GSP-eligible merchandise is not separately dutiable, notwithstanding the fact that the assist was incurred prior to the implementation of the GSP program. In other words, since the subject birdcage hangers are entitled to duty-free entry, no duty can be collected on the artwork assist.

It is the recommendation of your office that this protest be denied

in part, in accordance with C.R. 174.26, based on the belief that the cost of artwork for packaging is a dutiable item, and the assist declared on the May 6, 1977, entry was incurred and the vendor paid prior to the advent of GSP, and since a pre-GSP unliquidated entry is on hand, such assist will be deducted from the May 6, 1977, entry and applied to the unliquidated entry.

At the outset, it should be noted that questions regarding the feasibility of deducting from the subject entry and reapplying it to an unliquidated entry, or initiating a penalty action for failure to timely declare an element of value, are not germane to discussion or consideration in this decision. Our sole province is to decide, in conformity with current Customs law and practice, whether an acknowledged assist of artwork for the packaging of a GSP-eligible item is separately dutiable, We are of the opinion that it is not.

Law and analysis.—A review of some of the relevant points of law, in light of the facts presented, would be helpful. It is settled Customs law that an item furnished to a manufacturer at less than full cost or value, if necessary to develop an imported article, that is, if the imported article could not have been produced without the item, is an "assist" and forms "part" of the dutiable value of the imported article. See *Goodrich-Gulf Chemicals Inc.* v. *United States*, R.D. 11733 (1971). It follows therefore, that the value of the assist of artwork for packaging in this case, is to be treated as part of the value of the imported merchandise; it is not separately dutiable.

Your office requests an interpretation of our response to internal advice request No. 299/75 of Feburary 23, 1977. In that response, headquarters noted that in a ruling dated February 23, 1975, the Customs Service held that the value of artwork supplied for the packaging of imported merchandise would be considered part of the dutiable value of the merchandise as an assist. Prior to February 28, 1975. it was the position of headquarters that an assist of that nature was not part of dutiable value. In I.A. 299/75, Customs announced that the February 28, 1975, ruling was binding on all entries unliquidated as of that date. Thus, the subject entry, liquidated June 17, 1977, falls within the purview of the February 28, 1975, ruliug. But, the assist itself is not separately dutiable. That the assist was incurred prior to the advent of GSP is irrelevant, as duty liability only attaches after actual importation of the article, See C.R. 141.1.

Holding.—Therefore, we find that neither I.A. No. 299/75, nor current Customs law, present any basis of authority for treating the aforementioned assist as a separately dutiable item. Subject to the foregoing you are directed to allow the protest in full.

(C.S.D. 79–6)

Classification: Women's Swimsuits Designed for Use in Competitive Swimming

Date: October 25, 1978
File: CLA–2:R:CV:MA
055207 EY

DISTRICT DIRECTOR OF CUSTOMS,
Los Angeles, Calif. 90731.

This is a request for further review of a protest concerning the classification of women's swimsuits.

Facts.—This protest was filed on November 3, 1977, against your decision in the liquidation on August 5, 1977, of entry No. 521521, at the port of Los Angeles, Calif.

The merchandise under consideration consists of ladies' swimsuits specially designed for use in competitive swimming, imported from West Germany.

The sample submitted is a tight-fitting suit which has a lattice-worked seam on the back, extending from the neck to the waist. The purpose of the seam is to allow for the easy escape of air or water from the suit. The openings for the neck, arms, and legs are tightly cut and have elastic bands to minimize the amount of air and water penetration and therefore reduce resistance while swimming. The neckline of the suit is cut high and the shoulder straps are set close to the neck and collarbone. This reduces the movement or pulling of the suit, and helps prevent chafing at the legs, underarms, and shoulders.

Issue.—Are the subject swimsuits properly classifiable under the provision for other women's wearing appearel, in item 382.78, Tariff Schedules of the United States (TSUS), or under the provision for sport or athletic equipment, in item 735.20, TSUS?

Law and analysis.—Headnote 1(v), subpart D, part 5, schedule 7, TSUS, states that sports equipment does not include wearing apparel, other than specially designed protective articles such as, but not limited to, gloves, shoulder pads, leg guards, and chest protectors.

The subject swimsuits are not specially designed so as to be impractical for any use other than competitive swimming. The specially designed skin diving gloves in *Sports Industries, Inc.* v. *United States*, C.D. 4125 (1970), were not suitable for any other practical use and were therefore properly classifiable as sports equipment.

Furthermore, while the design of the swimsuit helps reduce chafing, the suits are not protective equipment similar to gloves, shoulder pads, leg guards, and chest protectors.

Holding.—The subject swimsuits are properly classifiable under the provision for other women's wearing apparel, not ornamented, of manmade fibers, in item 382.78, TSUS, dutiable at the rate of 25 cents per pound plus 32.5 ad valorem.

You should deny this protest.

(C.S.D. 79-7)

Classification: Electronic Insect Killing Machine

Date: October 25, 1978
File: CLA-2:R:CV:MA
055264 JAS

Re Decision on application for further review of protest No. 1001-8-007968.

AREA DIRECTOR OF CUSTOMS,
New York, N.Y. 10048.

DEAR SIR:

Facts.—This protest was filed against your classification of an electronic insect killing machine under the provision for electrical articles, and electrical parts of articles, not specially provided for, in item 688.40, Tariff Schedules of the United States (TSUS), duitable at the rate of 5.5 percent ad valorem. The subject merchandise is covered by entry No. 489950, liquidated on March 31, 1978.

The imported merchandise is a device consisting of one or more ultraviolet lamps which attract insects to an electrically charged grid were they are electrocuted. Protestant has submitted advertisements from various argricultural magazines to establish that the subject merchandise is sold through agricultural distributors primarily for use on farms to control insects for better livestock production. Protestant contends that this evidence supports classification of the merchandise under the provision for agricultural and horticultural implements not specially provided for, in item 666.00, TSUS.

Issue.—Has chief use of the insect killing machine as an agricultural or horticultural implement not specially provided for been established?

Law and analysis.—Merchandise of the class or kind under consideration would ordinarily be classified under the provision for electrical articles, and electrical parts of articles, not specially provided for, in item 688.40, TSUS, dutiable at the rate of 5.5 percent ad valorem.

In accordance with schedule 6, part 4, subpart C, headnote 1, TSUS, however, an article classifiable in item 688.40, TSUS, would

be classifiable in item 666.00, TSUS, if chiefly used as an agricultural or horticultural implement. General interpretative rule 10(e)(i), TSUS, states in part that chief use is the use which exceeds all other uses (if any) combined.

The evidence of record indicates that in addition to use on farms, electronic insect killing machines are suitable for use in homes, gardens, factories, stores, and other places where insect control is necessary. Accordingly, chief use of the subject merchandise as an argicultural or horticultural implement has not been established.

Holding.—Electronic insect killing machines are properly classifiable under the provision for electrical articles, and electrical parts of articles, not specially provided for, in item 688.40, TSUS, dutiable at the rate of 5.5 percent ad valorem.

Accordingly, the protest should be denied. Your file is being returned.

Recent Unpublished Customs Service Decision

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to air Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through September 27, 1978, are now available in microfiche format at a cost of $2.25 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the first set of microfiche and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Date: January 11, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Date of decision	File No.'s	Issue
10–20–78	103586	Carrier control: whether the Federal government may use foreign-built vessels for the transportation of personnel and equipment between coastwise points
12–12–78	103638	Carrier control: foreign-built vessel used solely for training and educational purposes
11–1–78	103643	Carrier control: whether use of a foreign-flag vessel in a U.S. port as a floating hotel is in violation of the coastwise laws
11–2–78	103667	Vessel repair: dutiability of inspection followed by repairs
12–12–78	103687	Vessel repair: dutiability of foreign repairs to public vessels
12–4–78	103694	Carrier control: foreign-built and owned vessel used solely to process fish on the high seas and in territorial waters
12–19–78	103696	Instruments of international traffic: whether gondolas and flatbeds used to transport large or irregularly shaped merchandise qualify as instruments of international traffic
11–24–78	103714	Vessels: whether Communist China is a foreign port or place where vessels of the United States are not ordinarily permitted to enter and trade for the purpose of assessing special tonnage tax and light money
11–21–78	103716	Instruments of international traffic: stainless steel tanks
11–17–78	103722	Carrier control: whether coastwise laws may be waived for carriage of quadriplegic patient
12–8–78	103747	Carrier control: transportation of stevedoring equipment for use in handling cargo in the foreign trade
12–19–78	305652	Appeals and protests: whether mistake of fact resulting in denial of protest is correctible
12–4–78	306769	Entry procedures: whether payment of duties may be deferred or duties paid in advance
12–15–78	541849	Valuation: whether overtime costs, sales tax and profit between unrelated parties are includable in computing cost of production for the purposes of item 807.00, TSUS
12–19–78	541628	Valuation: constructed value: whether research and development costs are valued separately as assists; fee paid under licensing agreement
11–30–78	709131	Prohibited and restricted importations: copyright law: bilingual dictionary
12–13–78	709361	Country of origin marking: untapped steel nut blanks
11–24–78	709570	Country of origin marking: substantial transformation: electric motors
12–13–78	709645	Prohibited and restricted importations: switchblade knives
12–4–78	709659	Country of origin marking: manhole covers
10–25–78	059739	Classification: Ibuprofen drug; ASP

ERRATUM

In the CUSTOMS BULLETIN of November 22, 1978 (vol. 12, No. 47), there was reproduced inadvertently as T.D. 78–415 a Customs Service decision which had been reproduced in an earlier issue of the CUSTOMS BULLETIN (Oct. 18, 1978; vol. 12, No. 42) as T.D. 78–366. The decision which was reproduced (dated June 7, 1978, control No. 305958 K) concerned the proper completion of Customs Form 5520, the "Special Steel Summary Invoice."

In order to eliminate the confusion which may result from the second reproduction of this decision, T.D. 78–415 has been canceled and will not appear in the bound edition of the CUSTOMS BULLETIN for 1978.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4782)

ASG INDUSTRIES, INC., PPG INDUSTRIES, INC., LIBBEY-OWENS-FORD COMPANY, AND C E GLASS *v.* UNITED STATES

Float glass—Countervailing duties

Plaintiffs, domestic manufacturers and wholesalers of float glass, have petitioned the Secretary of the Treasury for imposition of countervailing duties on such merchandise produced in the Federal Republic of Germany pursuant to section 303(a) of the Tariff Act of 1930, as amended by section 331(a) of the Trade Act of 1974. Following the denial of their administrative petition, plaintiffs instituted action under section 516(d) of the Tariff Act of 1930, as amended by section 321(f)(1) of the Trade Act of 1974.

Plaintiffs allege low-interest loans, investment subsidies in the form of cash grants, and tax credits given to the producers of float glass in West Germany are subject to countervailing duties. Defendant contends these bounties or grants are not countervailable, since they did not tend to distort international trade.

Held, plaintiffs have failed to overcome the presumption of correctness attaching to the negative finding by the Secretary of the Treasury.

Court No. 76-3-00667

[Judgment for defendant.]

(Decided January 5, 1979)

Stewart & Ikenson (*Eugene L. Stewart* and *Frederick L. Ikenson* of counsel) for the plaintiffs.

Barbara Allen Badcock, Assistant Attorney General (*David M. Cohen,* Chief, Customs Section; *Joseph I. Liebman, John J. Mahon* and *Sidney N. Weiss,* trial attorneys), for the defendant.

FORD, Judge: This action involves cross-motions for summary judgment filed pursuant to rules 4.12 and 8.2 of the rules of this court. Plaintiffs, domestic manufacturers, and wholesalers of float glass, allege certain bounties or grants were being paid or bestowed upon the manufacture of float glass in the Federal Republic of Germany. Plaintiffs urge such importations of float glass are, therefore, subject to assessment of countervailing duties as provided for in section 303(a) of the Tariff Act of 1930, as amended by section 331(a) of the Trade Act of 1974, 88 Stat. 1978, 2049. Defendant contends plaintiffs have failed to establish that the alleged bounties or grants possess the requisite effect upon international trade which would require imposition of countervailing duties.

The essential facts relating to assistance given the two glass manufacturers in the Federal Republic of Germany are not in dispute, nor is the chronology leading to the final determination of the Secretary of the Treasury (Secretary) in finding that such assistance did not amount to a bounty or grant within the meaning of section 303(a), as amended, supra.

The statements of material facts filed by the parties pursuant to rule 8.2(b) of the rules of this court, and upon which the parties contend there is no triable issue, established that plaintiffs are domestic manufacturers and wholesalers of float glass. On June 3, 1974, plaintiffs filed a petition with the Commissioner of Customs alleging bounties or grants were being paid to manufacturers of float glass in the Federal Republic of Germany. A "Notice of Receipt of Countervailing Duty Petition" was published in the Federal Register, 40 F.R. 2718, on January 15, 1975. As a result of the petition, an administrative in-

vestigation was conducted by the Department of Treasury with the assistance of the U.S. Customs Service pursuant to section 303(a), supra, and 19 CFR 159.47(c) (1975) in order to make a preliminary and final determination. On June 30, 1975, a "Notice of Preliminary Countervailing Duty Determination" was published in the Federal Register, 40 F.R. 27499, as follows:

> On the basis of an investigation conducted pursuant to § 159.47(c) Customs Regulations (19 CFR 159.47(c)), it has tentatively been determined that benefits have been received under various West German Federal and State Government regional development programs. Government aid to these regional areas consists of investment grant subsidies and bonuses for capital expenditures relating to construction or expansion of plants, low interest loans, and special railway tariff rates.
>
> Benefits derived from programs such as those which are the subject of this investigation can, in some circumstances, constitute bounties or grants within the meaning of the law. Since the information thus far made available concerning these programs has not been sufficient to permit a thorough analysis of their nature and effect, it has been determined preliminarily that imports of float glass from West Germany benefit from the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of the [sic] section 303 of the Tariff Act of 1930, as amended, by reason of the regional incentive payments mentioned above.

An amendment to "Notice of Preliminary Countervailing Duty Determination" was published in the Federal Register, 40 F.R. 34423 on August 15, 1975, extending the time within which the public could make submissions. On January 7, 1976, a "Notice of Final Countervailing Duty Determination" was published in the Federal Register, 41 F.R. 1300, and provides:

> Information has now been received that permits a more complete analysis of the alleged bounties and grants. Under various regional development programs administered by the Federal and State Governments, low interest loans and investment subsidies in the form of cash grants and tax credits have been given to producers of float glass. The German Government has advised the Treasury Department that these benefits have the effect of offsetting disadvantages which would discourage industry from moving to and expanding in less prosperous regions. Inasmuch as the recipient glass producers sell a preponderance of their production in the West German home market (not less than 80 percent and up to 99 percent), the level of exports to the United States is a small percentage of the amount exported, and the amount of assistance provided by the regional incentive programs is less than 2 percent of the value of float glass produced, these benefits are not regarded as bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C.

1303). All other allegations alleged in the petition are found not to be applicable to the manufacturer, producer or exporter.

Accordingly, for the reasons stated above, it is hereby determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production, or exportation of float glass from West Germany.

On January 28, 1976, plaintiffs, pursuant to section 516(d) of the Tariff Act of 1930, as amended by section 321(f)(1), filed a timely notice of their desire to contest the negative countervailing duty determination by the Secretary. The Secretary then caused publication of plaintiffs' notice in the Federal Register of March 10, 1976, 41 F.R. 10236 (1976). Plaintiffs, on March 15, 1976, commenced action by the filing of a summons with this court.

The facts relating to the two producers of float glass in the Federal Republic of Germany and the assistance given by the federal and state governments in Germany establish that Vereinigte Glaswerke GMBH (Vereinigte) and Flachglas/Delog/Detal (Flachglas) are the two manufactures of float glass in West Germany. In January 1971 Vereinigte completed construction of a float glass facility at Herzogenrath, West Germany, which is in the state of North Rhine-Westphalia, and Flachglas completed construction of its facility is Gladbeck, which is also in the state of North Rhine-Westphalia in 1973. The state of North Rhine-Westphalia was in an area qualifying for certain federal and state regional development assistance programs. Section 32 of the Coal Mining Adjustment Law of Germany permits eligible firms to apply for an investment premium of 10 percent of the production cost for plants established between April 30, 1967, and December 31, 1971, or for plants whose construction had been started before January 1, 1973. This investment premium was in the form of a tax credit which could have been utilized to the extent that the deduction exceeded the tax payable in the year of construction. However, it could have been carried forward against such taxes payable for the succeeding four fiscal years after which any remaining tax credits were lost. These tax credits amounted to 10 percent of the depreciable assets as defined by law and were granted to Vereinigte in 1973 and retroactively applied to the 1970 and 1971 corporate taxes. Flachglas also received a credit of 10 percent of the depreciable assets as defined by law.

In addition to the above, the state of North Rhine-Westphalia provided taxable assistance from funds of the federal and state governments for the improvement of regional economic structures in economically weak regions. Vereinigte, on January 30, 1970, was provided with investment assistance which was utilized to partially finance the cost of its Herzogenrath facility. Flachglas also received said assistance in

December 1972 and December 1973, which was used to partially finance the cost of its Gladbeck facility.

Under the European recovery program eligible enterprises could obtain loans at the interest rate of 6 percent per annum for a period from July 21, 1967, to the end of 1971. Vereinigte received a 12-year loan at the rate of 6 percent in 1970, the first 2 years free of redemption. The available commercial interest rate for similar issues was 8.5 percent per annum. Flachglas also received a 10-year loan at 6 percent interest in 1972, the first 18 months being free of redemption.

In 1970, the Federal Department of Labor of West Germany granted Vereinigte a 12-year loan with interest payable at the rate of 4 percent per annum, with the first 2 years free of redemption.

Vereinigte and Flachglas sold a preponderance of their production in the West German home market (not less than 80 percent and up to 99 percent). The amount of assistance provided by the regional incentive programs was less than 2 percent of the value of the float glass produced.

As indicated infra, float glass may be classified under nine item numbers of the Tariff Schedules of the United States. The "Summaries of Trade and Tariff Information," schedule 5, volume 5, TC publication 365 (1971), contain the following pertinent information:

> Ordinary glass is defined as flat glass other than special or colored glass and is usually clear or nearly clear glass whose coloring or opacifying content is so low that light transmittance is virtually unhindered.
>
> Plate glass and float glass are types of flat glass that have plane and parallel surfaces and show no distortion when objects are viewed through them. The two types of glass are virtually indistinguishable, differing principally in method of manufacture and cost of production. They are used inter-changeable in most applications although float glass is not produced as yet in all the thicknesses in which plate glass is made.
>
> Plate glass is manufactured principally by using the rolled glass process that turns out a continuous ribbon of flat glass of the desired thickness and width. The sheet of glass, after passing through an annealing lehr to remove internal stresses, is cut to standard sizes before being subjected to grinding and polishing operations. In the finishing process, the surfaces of the plate glass are ground by machine to a very smooth flat surface, which is then polished by buffing. The plate glass may be ground or polished on one side at a time or on both sides simultaneously. In the process of grinding and polishing, the plate glass acquires perfectly plane and parallel surfaces.
>
> Float glass is a relatively new type of flat glass [1] (available commercially since 1959) which has virtually parallel surfaces

[1] The float-glass process is patented, and U.S. producers of float glass are licensed by the British firm that invented the process.

similar to those of plate glass. The parallel surfaces of float glass, however, are achieved by floating the molten glass over molten metal rather than by grinding and polishing as is done with plate glass. Float glass is less costly to produce than plate glass principally because the float process does not require grinding and polishing operations.

* * * * * * *

Nearly all of the plate and float glass shipped by U.S. producers has consisted of glass ranging in thickness from one-eighth inch to one-fourth inch inclusive. In terms of square feet, considerably more than half of both the plate glass and the float glass shipped by U.S. producers in 1968 was one-eighth inch glass. * * *

"U.S. Industrial Outlook 1978" published by the United States Department of Commerce under the heading "Flat Glass" (p. 23) indicates the replacement of plate glass by float glass and makes the following statement:

The major products of the industry are float glass, tempered glass, and laminated glass. Tempered and laminated glasses are float glass that has received additional processing. Plate and sheet glass are made in small quantities, and have been replaced for all practical purposes by float glass. * * * [See also "U.S. Industrial Outlook 1977."]

It is further noted that "Modern Glass Practice" by Samuel R. Scholes, Ph. D. (seventh revised ed. 1975), page 240, states float glass "is replacing conventional plate glass because of the great economy of its manufacture."

The pertinent statutory provisions herein provide as follows:

Section 303(a), Tariff Act of 1930, as amended by section 331(a) of the Trade Act of 1974, 88 Stat. 1978, 2049–50:

(a) LEVY OF COUNTERVAILING DUTIES.—(1) Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

* * * * * * *

(5) The Secretary shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated.

* * * * * * *

Section 516 (d), Tariff Act of 1930, as amended by section 321 (f) (1) of the Trade Act of 1974, 88 Stat. 1978, 2048-49:

(d) Within 30 days after a determination by the Secretary—

(1) under section 201 of the Antidumping Act, 1921 (19 U.S.C. 160), that a class or kind of foreign merchandise is not being, nor likely to be, sold in the United States at less than its fair value, or

(2) under section 303 of this Act that a bounty or grant is not being paid or bestowed,

an American manufacturer, producer, or wholesaler of merchandise of the same class or kind as that described in such determination may file with the Secretary a written notice of a desire to contest such determination. Upon receipt of such notice the Secretary shall cause publication to be made thereof and of such manufacturer's, producer's, or wholesaler's desire to contest the determination. Within 30 days after such publication, such manufacturer, producer, or wholesaler may commence an action in the United States Customs Court contesting such determination.

* * * * * * *

(g) If the cause of the action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision.

Based upon the foregoing, it would appear that bounties or grants were bestowed on the production of float glass in the Federal Republic of Germany. Accordingly, the threshold issue for determination is whether the importations are subject to countervailing duties under the statute.

The statutory provision of section 303(a)(1) requiring the assessment of such duties in using the language "there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant" is couched in mandatory language. However, if Congress intended that all assistance given by foreign governments are bounties or grants, there would be no reason to have given the Secretary authority to make a deter-

mination of whether a bounty or a grant had been bestowed. This is clearly evidenced by the following language utilized in *United States (Ralph Valls, Party-in-Interest)* v. *Hammond Lead Products, Inc.*, 58 CCPA 129, C.A.D. 1017, 440 F. 2d 1024 (1971), cert. denied, 404 U.S. 1005 (1971):

> The Congress is, of course, well aware of these problems, and it would seem it elects to rely on executive discretion to avoid making the United States ridiculous by penalizing imports from foreign countries which have taken reasonable action, action our own government takes or counsels. Countervailing duties are strong medicine, well calculated to arouse violent resentment in countries whose trade practices are branded by the court as unethical. In what has been hitherto the regular practice of the Treasury Department making the decision to assess countervailing duties, the decisions, not necessarily partisan political, but political in a broad sense, legislative, or of a policy nature, can be made by an agency that is equipped and staffed to make them. There can be no doubt that the Secretary is under a legal duty to assess countervailing duties if he sees a bounty or grant being paid, but we think he does and must exercise some discretion in defining what acts of foreign governments confer bounties or grants, when the case is doubtful. * * *

It is the function of the courts in interpreting statutory provisions to carry out the intent of Congress in enacting the law. In order to ascertain intent courts may resort to legislative history. *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1 (1976); *A. N. Deringer, Inc.* v. *United States*, 63 CCPA 37, C.A.D. 1161 (1975). Chief Judge Markey, speaking for the court in *United States* v. *Zenith Radio Corporation*, 64 CCPA 130, C.A.D. 1195 (1977, made the following appropriate comment:

> The intent of Congress, as expressed in § 303 itself, is not difficult to fathom. As the predecessor of this court, in *Nicholas & Co.* v. *United States*, 7 Ct. Cust. Appls. 97, T.D. 36426 (1916), and the Supreme Court in *Nicholas*, 249 U.S. at 39, indicated, the words "bounty" and "grant" are broad but not ambiguous. "Net amount" necessarily means that countervailing duties should equate to the true bounty or grant actually conferred. Congress' intent to provide a wide latitude, within which the Secretary of the Treasury (Secretary) may determine the existence or nonexistence of a bounty or a grant, is clear from the statute itself, and from the Congressional refusal to define the word "bounty" * * *.
>
> * * * * * * *
>
> Not without reason has Congress refrained from spelling out either the precise criteria for determining what shall constitute a bounty or grant and what shall not, or the calculations to be followed in determining net amount. As this court said in *Ham-*

mond Lead, supra note 11: "In the assessment of a countervailing duty, the determination that a bounty or grant is paid necessarily involves judgments in the political, legislative or policy spheres," 58 CCPA at 137, 440 F. 2d at 1030, to which the court might well have added the eminently important economic sphere. Our nation's relationships in the world family are particularly sensitive to the assessment of the additional duties known as "countervailing" duties. Such assessment is not just a means of protecting our producers, as Congress has recognized in refusing to require proof of injury before making such assessment; it is also one of the chips in a game played by governments on a world stage. Presumably enacting and reenacting § 303 in this broad light, illuminative of the statute's role in the world, Congress in its wisdom has simply refrained from calling all the countervailing duty plays in advance.[15]

In *Zenith Radio Corporation* v. *United States*, 437 U.S. 443 (1978) the Supreme Court, in considering what constitutes a bounty or a grant, referred to Senate Report No. 93–1298, page 183 (1974), which so far as is pertinent herein, made the following comment:

> The Committee recognizes that the issues involved in applying the countervailing duty law are complex, and that, internationally, there is the lack of any satisfactory agreement on what constitutes a fair, as opposed to an "unfair," subsidy. In the long run, United States interests will be best served by an international agreement to eliminate subsidies which *distort world trade patterns and discriminate against United States sales both at home and abroad.* Central to the forthcoming mutilateral negotiations should be the establishment of acceptable international rules governing the use of subsidies. This is particularly important because of the strong possibility that oil importing nations will be tempted to subsidize their manufactured goods exports in order to pay for their "oil deficits." [Italic supplied.]

With respect to unfair competitive advantage, the Supreme Court in *Zenith* stated:

> * * * This purpose is relatively clear from the face of the statute and is confirmed by the congressional debates: the countervailing duty was intended to offset the unfiar competitive advantage

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[15] Congress' most recent reference to the international implications of export incentives and countervailing duties, and to the role of the Executive in connection herewith, appears in § 331(a), Trade Act of 1974, 19 USC 1303(d)(1) (Supp. V. 1975):

> It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

To facilitate negotiations, Congress, while continuing to refrain from a definition of "bounty" or "grant," granted authority to the Secretary to suspend during the four years beginning January 3, 1975, and under certain conditions, the imposition of countervailing duties, after having determined that a bounty or grant is in fact being bestowed, 19 USC 1303(d)(2), and to reinstate such duties, 19 USC 1303(d)(3). In § 1303(e), Congress provided for reports to it of actions under § 1303(d)(2), and for the undoing thereof upon a resolution of disapproval by the Senate or the House.

that foreign producers would otherwise enjoy from export subsidies paid by their governments. See, *e.g.*, 30 Cong. Rec. at 1674 (remarks of Sen. Allison), 2205 (Sen. Caffery), 2225 (Sen. Lindsay). The Treasury Department was well-positioned to establish rules of decision that would accurately carry out this purpose, particularly since it had contributed the very figures relied upon by Congress in enacting the statute. See *Zuber* v. *Allen*, 396 U.S. 168, 192 (1969).

In view of the foregoing, it is apparent Congress was aware of the complexities involved not only in determining or defininig a bounty or grant, but whether such bounty or grant is fair or unfair.

The test enunciated in *Downs* v. *United States*, 187 U.S. 496 (1903) and *Nicholas & Co.* v. *United States*, 249 U.S. 34 (1919) is whether, as a result of governmental programs, exportation of the merchandise so produced is encouraged. The fact that governmental assistance was given to aid depressed areas in the Federal Republic of Germany is therefore of no consequence.

Whether as a result of bounties or grants, exportation was encouraged to the extent it would distort foreign trade, it is to be noted in the statement of material facts filed pursuant to rule 8.2(b) of the rules of this court, and particularly the "Notice of Final Countervailing Duty Determination," that no less than 80 percent and up to 99 percent of the production was sold in West Germany. The statement further indicates that the assistence was less than 2 percent of the value of float glass produced in the Federal Republic of Germany. While up to 20 percent of the production and 2 percent of the value may be more than de minimus, the bounties do not appear to have induced the sale of such merchandise in such quantities or value as would tend to distort international trade. The Secretary has in effect made such a finding in holding countervailing duties were not applicable herein. Such a finding is presumptively correct. Compatible with the finding by the Secretary that governmental assistance given the float glass manuufacturers in West Germany did not distort international trade, the court notes the U.S. Department of Commerce, Bureau of the Census figures [1] indicate that exports of float glass by the United States from 1972 to 1975 rose from 59 million square feet to 103 million square feet. The court has utilized the years 1972 to 1975 in view of the fact that plaintiffs in their pretrial discovery proceedings sought, by way of written interrogatories, certain information concerning production, etc. for these years. The discovery was the subject of a motion to compel by plaintiffs and a motion for a protective order by defendant, both of which were granted as to certain information. Of significant in-

[1] U.S. Bureau of the Census, "U.S. Exports, Schedule B Commodity by Country—Domestic Merchandise," report FT 410: Item No. 6644040 for the years 1972-75.

terest are the figures from the same source which establish that exports of float glass to West Germany increased from 409,000 square feet in 1972 to 979,000 square feet in 1975. These substantially increased sales in the home market of a country which provided bounties or grants are indicative that there has been no discrimination in sales made by the United States to West Germany. It follows that United States sales were therefore competitive in the home markets of West Germany. What better proof can be adduced that float glass produced in the Federal Republic of Germany under a bounty or grant system did not tend to distort international trade or discriminate against United States sales for home consumption or export.

The import statistics of the U.S. Department of Commerce, Bureau of the Census,[2] are arranged according to the provisions of the Tariff Schedules of the United States since the information is obtained from the entries of merchandise utilizing the TSUS number plus the statistical suffix. There are nine provisions[3] under which float glass, plate glass, and colored or special glass may be entered. The court is not privy to the size or type of float glass covered by this action and hence has reviewed the entire nine categories (excluding glass with wire) of possible classification under the Tariff Schedules of the United States. It is to be noted, however, that the 1972 import statistics establish imports from West Germany in all nine categories. While the figures may include categories of glass not intended to be encompassed within this action, the statistical information is nevertheless enlightening. Imports of glass from all countries in these nine item numbers decreased from 72 million square feet in 1972 to 19 million square feet in 1975. Imports in these categories from West Germany fell from 3,900,000 square feet in 1972 to 518,000 square feet in 1975.

According to the U.S. Department of Commerce, Bureau of the Census,[4] the domestic production covering float and plate glass not over one-eighth inch in thickness and over one-eighth inch but not over one-fourth inch in thickness establishes a marked increase. Production rose from 1,424 million square feet in 1972 to 1,920 million square feet in 1975.

The above figures covering exports, imports, and domestic production, while they may not be determinative, are indeed supportive of the Secretary's finding. It is a well established principle of law which needs no citation that courts may take judicial notice of official publications.

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[2] U.S. Bureau of the Census, "U.S. Imports for Consumption, TSUSA Commodity by Country of Origin," report FT 246 for the years 1972-75.

[3] Tariff Schedules of the United States, item numbers including statistical suffix: 543.2100, 543.2300, 543.2730, 543.2770, 543.3100, 543.6100, 543.6300, 543.6700, and 543.6900.

[4] Current industrial reports MQ-32A for the years 1972-75: Items designated 3211213 and 3211215.

Congress in enacting the countervailing duty statute was primarily interested in merchandise produced under a bounty or grant system which was imported into the United States and the possible effect it might have on domestic producers of the merchandise involved in both domestic and foreign sales. Absent are figures involving production, consumption, importation, and exportation of float glass of every producing nation. However, the 1972–75 figures cited supra support a finding that float glass produced in the Federal Republic of Germany did not tend to distort international trade and did not discriminate against the U.S. production and sales, both domestic and foreign.

Based upon the record, plaintiffs have failed to overcome the presumption of correctness attaching to the action of the Secretary.

In view of this finding, the court deems it unnecessary to consider the alternative positions of the parties.

Plaintiffs' motion for summary judgment is, therefore, denied and defendant's cross-motion for summary judgment is granted.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Customs Rules Decisions

(C.R.D. 79–1)

JAMES A. COLE CO., INC. *v.* UNITED STATES

On Plaintiff's Motion to Suspend

Court No. 75–7–01724

Port of New York

[Motion to suspend denied.]

(Dated January 2, 1979)

Barnes, Richardson & Colburn (*Peter J. Fitch* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Sidney H. Kuflik*, trial attorney), for the defendant.

MEMORANDUM OPINION AND ORDER

LANDIS, Judge: This case raises the question of under what circumstances an action may be suspended under a test case.

The relevant Customs Court rule is 14.7(a): "An action may be suspended pending the final determination of another action (hereinafter referred to as a test case) if it involves an issue of fact or a question of law which is the same as the issue of fact or question of law involved in such test case."

In the proposed test case here, *Pier I Imports, Inc.* v. *United States*, court No. 75–1–00100, the merchandise, fish netting, was classified under TSUS item 386.04: "Articles not specially provided for, of textile materials: Lace or net articles, whether or not ornamented, and other articles ornamented: Of cotton." In said case plaintiff had claimed the proper classification is under TSUS item 355.35: "Fish netting and fishing nets (including sections thereof), of textile materals: Of cotton." In the proposed suspended case, *James A. Cole Co., Inc.* v. *United States*, 75–7–01724, the merchandise was classified under

the same item number as the test case, viz 386.04 TSUS. Plaintiff urges alternatively TSUS item 352.80, "Netting, in the piece, made on a lace, net, or knitting machine, whether or not ornamented: * * * Not ornamented: * * * Other" or TSUS item 359.10, "Textile fabrics, including laminated fabrics, not specially provided for: Of Cotton," as the correct classification.

According to the plaintiff, the issue of fact or question of law which is alleged to be the same is: "Whether the merchandise is properly classifiable under TSUS item 355.35." This argument is obviously fallacious. TSUS item 355.35 is only the claimed provision in the proposed test case, whereas, in the proposed suspended case, TSUS item 355.35 does not appear. Therefore under plaintiff's theory, there is no common question of law or fact between the two cases.

The motion of plaintiff to suspend is denied.

(C.R.D. 79–2)

ARMSTRONG BROS. TOOL CO. ET AL. *v.* UNITED STATES (GREAT NECK SAW MANUFACTURING, INC., PARTY-IN-INTEREST)

Opinion and Order on Plaintiffs' Motion to Compel Discovery

Court No. 77–8–02004

[Secretary of Treasury directed to transmit documents to Court for *in camera* inspection; defendant's request to file immediate appeal denied.]

(Dated January 4, 1979)

Frederick L. Ikenson for the plaintiffs.

Barbara Allen Babcock, Assistant Attorney General (*Joseph I. Liebman* and *Sidney N. Weiss*, trial attorneys), for the defendant.

NEWMAN, Judge: This is an American manufacturers' action brought pursuant to 28 U.S.C. 1582(b)(1970), 28 U.S.C. 2632(a) (supp. V, 1975) and 19 U.S.C. 1516(c) (supp. V, 1975), involving the Antidumping Act of 1921, as amended (19 U.S.C. 160, et seq. (1970 and supp. V, 1975)). For the background of this litigation, reference is made to my prior opinion in *Armstrong Bros. Tool Co. et al.* v. *United States, etc.*, 80 Cust. Ct. 160, C.D. 4751, *modified on rehearing*, 81 Cust. Ct. ——, C.R.D. 78–14 (1978).

Plaintiffs, initially by means of a request for production of documents under rule 6.4, and now by a motion to compel discovery under rule 6.5, seek access to six documents in the files of the Treasury Department. Defendant claims that portions of these six documents

are nondiscoverable on the ground of executive privilege. In support of its claim of executive privilege, defendant has submitted an affidavit executed by the Secretary of the Treasury. Plaintiffs contend that any possible executive privilege pertaining to the six documents was waived since "[d]efendant has not filed any motion for a protective order, as it should have done". (Plaintiffs' memorandum at 3.)

I

The contentions of the parties have been considered in the following factual context. On September 11, 1978, defendant identified 95 documents in response to plaintiffs' request for production, and advised plaintiffs that it would not produce the 6 documents involved herein. Respecting these six documents, defendant's response states that plaintiffs had agreed to give defendant an additional 2 weeks extension (up to Sept. 25, 1978) in which to make a claim of privilege or assert other objections to production of the six documents. On September 25, 1978, defendant served plaintiffs with expurgated copies of the six documents and a covering letter explaining:

> The documents have some sections deleted. The Secretary of the Treasury has decided to claim privilege as to those portions inasmuch as they contain intra-office staff advice and opinions. In addition the deleted sections do not contain factual matter.
>
> In addition the last paragraph on page 3 of the April 7, 1975, memorandum has been deleted because it contain [sic] information totally irrelevant to this case. It relates to another case. Also, the parenthetical portion of the third full paragraph on page 2 of the March 19, 1975, memorandum has been deleted because it too contains information irrelevant to this case. It refers to another case.
>
> We are not making any claim of confidentiality as to the portions of the documents being supplied to you.

In essence, then, defendant has supplied plaintiffs with unexpurgated copies of 89 documents, along with expurgated versions of the 6 documents in question in this motion involving a claim of executive privilege.

II

As noted above, in support of their argument that defendant waived any possible claim of executive privilege, plaintiffs point out that defendant has not filed a motion for a protective order pursuant to rule 6.1 (c). That rule reads:

> (c) *Protective Orders.*—Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or

undue burden or expense, including, but not limited to, one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret, or confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Defendant, on the other hand, insists that under rule 6.4(b) it was proper to claim executive privilege by interposing an objection to plaintiffs' request for production, as was done in the instant case, and that the filing of a motion for a protective order was not required. Rule 6.4(b), so far as pertinent, provides:

(b) *Procedure:* * * *

The party upon whom the request is served shall serve a written response within a period designated in the request, not less than 30 days after the service thereof or within such shorter or longer time as the parties may agree or the court may allow. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under rule 6.5 with respect to any objection to or other failure to respond to the request, or any part thereof, or any failure to permit inspection as requested.

As is readily apparent, rule 6.4(b) explicitly provides for the assertion of objections to a request for production of documents. Thus, although a motion for protective order under rule 6.1(c) may serve as a procedural vehicle for interposing a claim of executive privilege, the Government may also assert its claim of privilege by a timely objection to the request for production of documents. See Wright & Miller, "*Federal Practice and Procedure.*" Civil section 2213 (1970). If the party seeking discovery wishes to challenge the claim of privilege raised as an objection to production, it may do so by a motion to compel discovery under rule 6.5, as plaintiffs have proceeded to do in the instant case. Thereupon, the court will rule on the motion to

compel, and determine the question of privilege. Cf. *Broadbent* v. *Moore-McCormack*, 5 F.D.R. 220, 222 (E.D. Pa. 1946).

Here, it is undisputed that plaintiffs granted defendant an extension of time until September 25, 1978, to assert a claim of privilege or make other objections to plaintiffs' request; and that defendant asserted a claim of executive privilege in its covering letter of September 25, 1978, with respect to the deleted protions of the six documents furnished to plaintiffs. Under these circumstances, plaintiffs' contention that defendant has waived any privilege is without merit.

The two decisions upon which plaintiffs rely are plainly distinguishable from the facts presented here.

In *Intercontinental Fibres, Inc.* v. *United States*, 69 Cust. Ct. 337, C.R.D. 72–27 (1972) Judge Watson, construing rule 7.3 pertaining to the taking of depositions upon oral examination, treated defendant's objections to plaintiff's motion for a deposition as a cross-motion for a protective order. However, it must be recognized that rule 7.3 does not expressly provide for objections "addressed to the motion to take a deposition," whereas here the Government followed rule 6.4(b), which specifically provides for objections "addressed to the request for production of documents."

In *Airco, Inc.* v. *United States*, court No. 76–3–00643, Judge Richardson, inter alia, denied the Government's motion for leave to file out of time a motion for a protective order based on a claim of privilege.[1] Unlike the present case, in *Airco* the Government admittedly failed to object or claim privilege in response to plaintiff's request for production of documents, as contemplated by rule 6.4(b), but instead stated that it would comply with plaintiff's request.

Plainly, here the defendant has followed a correct procedure in asserting the Secretary's claim of privilege as an objection to plaintiffs' request for production of documents pursuant to rule 6.4(b). Consequently, there has been no waiver by defendant of any executive privilege pertaining to the six documents in dispute.

III

Turning to consideration of the merits of defendant's claim of executive privilege:

In support of its claim, defendant has filed an affidavit by the Secretary of the Treasury formally asserting executive privilege with respect to each of the six documents "to the extent they contain advice, recommendations, or statements of views and opinions by officials and staff members of the Treasury Department." Among other things, the affidavit recites the Treasury's need for confidentiality in the decisionmaking process in connection with antidumping investigations, and the serious injury to the U.S. Government that would

[1] Unpublished order entered June 1, 1978.

result if the advice, recommendations, or statements of views and opinions contained in the documents were disclosed publicly.

It is well established that the executive branch is privileged to withhold disclosure of intragovernmental documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions are formulated. The foregoing privilege, however, is not absolute but is qualified. Thus, consideration of a claim of executive privilege requires a delicate balancing of competing interests. On the one hand, there is the public's interest in preserving confidentiality to promote intragovernmental candor which is necessary for orderly functioning of the Government; on the other hand, there is the individual's need for disclosure of the particular information sought. And in the absence of proper demonstration of need for production of the privileged matters which outweighs the harm that disclosure may do to intragovernmental candor, the claim of privilege should be sustained. *Sprgaue Electric Company* v. *United States* (Capar Components Corp., Party-in-Interest), 81 Cust. Ct. ——, C.R.D. 78–18 (1978) and cases there cited. Here, plaintiffs have failed to show any need for disclosure, and indeed have not even challenged the merits of defendant's claim of privilege.

As mentioned above, certain portions of the six documents involved herein have been deleted by defendant. Although the Secretary states in his affidavit that each of six documents "contain advice, recommendations or statements of views or opinions, of various officials and staff members of this [the Treasury] Department," the Secretary's affidavit does not "specifically" aver that the "deleted portions" comprise advice, opinions, and recommendations.[2] Executive privilege, fundamentally, does not apply to purely factual data prepared for intra or interoffice use which would not compromise military or state secrets. *EPA* v. *Mink*, 410 U.S. 73, 87–88 (1973); *Verrazzano Trading Corp.* v. *United States*, 70 Cust. Ct. 347, 350–52, C.R.D. 73–9, 358 F. Supp. 273 (1973). Even factual material included in deliberative memoranda, generally, has been held discoverable if susceptible to severance from its context. See *Smith* v. *F.T.C.*, 403 F. Supp. 1000, 1015 (D. Del. 1975).

Where discovery is resisted, as in the instant case, courts frequently examine documents "in camera" in order to determine whether they should be held in a confidential status or be disclosed to the party seeking production. *United States* v. *Nixon*, 418 U.S. 683, 714–16 (1974); *EPA* v. *Mink*, 410 U.S. 73, 88 (1973); *Pasco Terminals, Inc.* v. *United States*, 80 Cust. Ct. 249, C.R.D. 78–3 (1978); *Verrazzano*

[2] Parenthetically, defendant's covering letter of Sept. 25, 1978, served with the 6 expurgated documents states: "The Secretary of the Treasury has decided to claim privilege as to those [deleted] portions inasmuch as they contain intraoffice staff advice and opinions. In addition the deleted sections do not contain factual matters."

Trading Corp. v. *United States*, 69 Cust. Ct. 307, 314, C.R.D. 72–19, 349 F. Supp. 1401 (1972); *Sun Oil Company* v. *United States*, 514 F. 2d 1020, 1024–25 (Ct. Cl. 1975). However, "in camera" inspection is not to be utilized automatically in every case. *EPA* v. *Mink*, *supra*, at 92–93.

As we have seen, defendant claims that "portions" of the six documents sought by plaintiffs are nondiscoverable on the ground of executive privilege. In certain cases where courts have utilized the "in camera" procedure for determining claims of executive privilege, "it appeared, before the inspection was ordered, that the claimant was entitled to some amount of discovery," and it was necessary to separate the privileged and unprivileged materials. *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 332 (D.D.C. 1966), aff'd sub nom. *V.E.B. Carl Zeiss, Jena* v. *Clark*, 128 U.S. App. D.C. 10, 384 F. 2d 979 (1967), cert. denied, 389 U.S. 952 (1967). Here, plaintiffs are concededly entitled to a severable but undelineated portion of the six documents involved. It is, of course, for the Court and not the Secretary of the Treasury to decide whether the expurgated portions of the documents are privileged as claimed by defendant. Cf. *Sprague*, *supra*, and cases cited. While the foregoing proposition may be self-evident, at times there is value in reiterating the obvious.

In light of the interplay of the various factors involved herein, and under all the facts and circumstances, it is appropriate that the Court examine the six documents "in camera" without deletions in order to determine whether plaintiffs should have access to any portion of the matters expurgated by defendant. Indeed, there can be no doubt of the propriety of such "in camera" inspection. *Kerr* v. *United States District Court*, 426 U.S. 394 (1976); *United States* v. *Nixon*, 418 U.S. at 706. Accordingly, at this time there is no basis for granting defendant's request for an immediate appeal pursuant to 28 U.S.C. 1541(b) (1976).

In view of the conclusions reached, it is hereby ORDERED:

(1) That the Secretary of the Treasury shall within thirty (30) days of the entry of this order prepared and transmit under seal to the clerk of the U.S. Customs Court certified copies of the six documents identified in the Secretary's affidavit. These copies shall be in complete and unexpurgated form.

(2) The unexpurgated copies shall be inspected by the court "in camera" together with the expurgated copies heretofore submitted by the parties for the purpose of considering defendant's claim of executive privilege and determining whether the expurgated portions should be disclosed to plaintiffs.

(3) Defendant's request to file an immediate appeal pursuant to 28 U.S.C. 1541(b) is denied at this time.

APPEAL 79–10.—United States *v.* International Seaway Trading Corp.—BASKETBALL HIGH SHOES—FOOTWEAR OF RUBBER OR PLASTICS—FOOTWEAR WITH UPPERS OF VEGETABLE FIBERS—TSUS. Appeal from C.D. 4773.

In this case the merchandise consists of footwear invoiced as basketball high shoes and is the same in all material respects as the footwear in the incorporated case, *International Seaway Trading Corp.* v. *United States*, 61 CCPA 20, C.A.D. 1112, 488 F. 2d 544 (1973). The imported footwear was classified under item 700.60 of the Tariff Schedules of the United States as footwear which is over 50 percent by weight of rubber or plastics and assessed with duty at the rate of 20 percent ad valorem. The Customs Court held that the merchandise should be classified as claimed by plaintiff-appellee under item 700.70 as footwear with soles of material other than leather, with uppers of vegetable fibers, and dutiable at 15 percent.

It is claimed that the Customs Court erred in finding and holding that the subject merchandise is properly classifiable under item 700.70, supra; in not finding and holding that the subject merchandise was properly classified under item 700.60, supra; and in making evidentiary rulings contrary to the law

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APPEAL 79–11.—United States *v.* Hawaiian Independent Refinery, Inc.—CRUDE OIL—FUEL OIL CONSUMED WITHIN A FOREIGN TRADE ZONE—VALIDITY OF ASSESSMENT OF CUSTOMS DUTIES—TSUS—FOREIGN TRADE ZONE ACT. APPEAL from C.D. 4777.

This case involves foreign crude oil imported into a foreign trade zone, partially processed and refined and therein consumed and used as a secondary and supplemental source of fuel in a refining process at plaintiff-appellee's oil refinery. Customs required plaintiff to file consumption entries for the merchandise so used as fuel within the zone and classified the fuel under either TSUS item 475.05 as fuel oil testing under 25° A.P.I. (01.25 ct 1 gal) or item 475.10 as fuel oil testing 25° A.P.I. or more (0.25 ct 1 gal). Plaintiff claimed the merchandise was nondutiable because it never entered customs territory. As an alternative claim, plaintiff submitted that if dutiable, the merchandise should be classified under item 475.15 as "natural gas, methane,

ethane, propane, butane, and mixtures thereof," entitled to free entry. The Customs Court sustained plaintiff's claim that the merchandise was not subject to duty under the Tariff Schedules of the United States.

It is claimed that the Customs Court erred in finding and holding that pursuant to the Foreign Trade Zone Act, 19 U.S.C. 81(a) et seq., the subject merchandise is not subject to customs duties under the Tariff Schedules of the United States and in not finding and holding that the merchandise was properly classified under either item 475.05 or item 475.10, TSUS, with duty at the rate of 0.125 cents per gallon or 0.25 cents per gallon respectively.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of
CERTAIN ATTACHE CASES } Investigation No. 337–TA–49

Notice of Commission Hearing on the Presiding Officer's Recommendation, and on Relief, Bonding and the Public Interest

Recommendation of "no violation" issued

In connection with the U.S. International Trade Commission's investigation, under section 337 of the Tariff Act of 1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain attaché cases in the United States, the presiding officer recommended on December 8, 1978, that the Commission determine that there is no violation of section 337. The presiding officer certified the record to the Commission for its consideration. Copies of the presiding officer's recommendation may be obtained by interested persons by contacting the office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

Commission hearing scheduled

The Commission will hold a hearing beginning at 10 a.m., e.s.t., on Thursday, February 1, 1979, in the Commission's hearing room (room 331), 701 E Street NW., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the presiding officer's recommendation that there is no violation of section 337 of the Tariff Act of 1930. Second, the Commission will receive oral presentations concerning appropriate relief, bonding, and the public

interest in the event that the Commission determines that there is a violation of section 337. These matters are being heard on the same day in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for each portion of the hearing follows.

Oral argument on presiding officer's recommendation

A party to the Commission's investigation or an interested agency desiring to present to the Commission an oral argument concerning the presiding officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 of its 30 minutes for rebuttal. The oral arguments will be held in this order: Complainant, respondents, interested agencies, and Commission investigative staff. Rebuttals will be held in this order: Respondents, complainant, interested agencies, and Commission investigative staff.

Oral presentations on relief, bonding, and the public interest

Following the oral arguments on the presiding officer's recommendation, a party to the investigation, an interested agency, a public-interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. *Relief.*—If the Commission finds a violation of section 337, it may issue (1) an order which could result in the exclusion from entry of certain attaché cases into the United States or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of these attaché cases.

2. *Bonding.*—If the Commission finds a violation of section 337 and orders some form of relief, such relief would not become final for a 60-day period, during which the President would consider the Commission's report. During this period the attaché cases would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury.

3. *The public interest.*—If the Commission finds a violation of section 337 and orders some form of relief, it must consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

Those making an oral presentation will be limited to no more than 55 minutes. Each participant will be permitted an additional 5 minutes for summation after all presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: Complainant, respondents, interested agencies, public-interest groups, other

interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing

Any person desiring to appear at the Commission's hearing must file a written request to appear with the Secretary to the U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, no later than the close of business (5:15 p.m., e.s.t.) on January 30, 1979. Such written request must indicate whether such person wishes to present an oral argument concerning the presiding officer's recommendation or an oral presentation concerning relief, bonding, and the public interest, or both. While only parties to the Commission's investigation, interested agencies, and the Commission investigative staff may present an oral argument concerning the presiding officer's recommendation, public-interest groups and other interested members of the public are encouraged to make an oral presentation concerning the public interest.

Written submissions to the Commission

The Commission requests that all written submissions be filed no later than the close of business (5:15 p.m., e.s.t.) on February 12, 1979.

1. *Briefs on the presiding officer's recommendation.*—Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommendation. Briefs must be served on all parties of record to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefs, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.*—Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission if it determines that there is a violation of section 337 and that relief should be granted.

Additional information

The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request "in camera" treatment. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treat-

ment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the Federal Register of March 7, 1978 (43 F.R. 9379).

By order of the Commission.

Issued: January 10, 1979.

KENNETH R. MASON,
Secretary.

[AA1921–193]

Bicycle Tires and Tubes From the Republic of Korea

Notice of Investigation and Hearing

Having received advice from the Department of the Treasury on December 26, 1978, that bicycle tires and tubes from the Republic of Korea, are being, or are likely to be sold at less than fair value, the U.S. International Trade Commission, on January 9, 1979, instituted investigation No. AA1921–193 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purposes of its determination concerning sales at less than fair value, the Treasury Department defined "bicycle tires and tubes" as pneumatic bicycle tires and tubes therefor of rubber or plastics, whether such tires and tubes are sold as units or separately, as provided for in TSUS items 772.48 and 772.57.

Hearing.—A public hearing in connection with the investigation will be held in Washington, D.C., beginning at 10 a.m., e.s.t., on Thursday, February 8, 1979, in the hearing room, U.S. International Trade Commission Building, 701 E Street NW. All persons shall have the right to appear by counsel or in person, to present evidence, and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission, in writing, not later than noon, Thursday, February 1, 1979.

By order of the Commission.

Issued: January 10, 1979.

KENNETH R. MASON,
Secretary.

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